

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

JOHN D. RAFFAELLI,

PLAINTIFF,

vs.

VIRGINIA RADNEY and STEPHEN
A. RAFFAELLI,

DEFENDANTS.

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CIV No. 598cv171

FILED-CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
JUN 15 PM 3:00
M. Melvin

MOTION TO DISMISS

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW JOHN D. RAFFAELLI, Plaintiff herein, and for his Motion to Dismiss this cause in its entirety would respectfully show unto the Court as follows, to-wit:

I.

On the Motion of the Plaintiff, this matter was abated pending the decision of the Texas Supreme Court in a proceeding styled *In the Matter of the Marriage of Virginia Raffaelli and Stephen Anthony Raffaelli*. Therein, Stephen A. Raffaelli, one of the Defendants herein, sought enforcement of a Rule 11 Agreement between he and the other Defendant herein, Virginia Radney. Judgment in that matter is now final, having been resolved fully in favor of Stephen A. Raffaelli.

II.

In this proceeding, Plaintiff sought to recover an indebtedness due Plaintiff's assignor which indebtedness was secured by properties the subject of the litigation between Stephen A. Raffaelli and Virginia Radney. Under the terms of the Rule 11 Agreement upheld in that litigation, Stephen A. Raffaelli is now the owner of all the

17

properties securing the indebtedness due Plaintiff's assignor. Stephen A. Raffaelli, Plaintiff and Plaintiff's assignor have entered into a family settlement agreement concerning the indebtedness due Plaintiff and Plaintiff's assignor, and Plaintiff has determined that the properties awarded Stephan A. Raffaelli in the litigation with Virginia Radney are sufficient to insure payment and performance of the family settlement agreement. Consequently, Plaintiff no longer seeks a recovery against Defendant Virginia Radney.

III.

Defendant, Stephen A. Raffaelli, does not oppose this Motion to Dismiss.

IV.

As Plaintiff has entered into a family settlement agreement with Defendant Stephen A. Raffaelli and as Plaintiff is satisfied that there is sufficient property available to pay the indebtedness due Plaintiff of Defendant Stephen A. Raffaelli and as the dispute as to the indebtedness has been resolved as between Plaintiff, Plaintiff's assignor and Stephen A. Raffaelli, and as Plaintiff no longer seeks a recovery against Defendant Virginia A. Raffaelli, there remain no issues to be litigated as between the parties herein.

PREMISES CONSIDERED, Plaintiff prays that this matter be dismissed at the cost of the party incurring same.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A true and correct copy of the above and foregoing Motion to Dismiss has been provided to Mr. Jerry A. Rochelle and Ms. Shannon Tuckett, LAVENDER, ROCHELLE & BARNETTE, PLC, 507 Hickory, Texarkana, Arkansas 75504-1938, and Mr. John R. Mercy, ATCHLEY, RUSSELL, WALDROP & HLAVINKA, L.L.P., 1710 Moores Lane, Texarkana, Texas 75505-5517, this 14th day of June, 2000.



E. Ben Franks